

Appl. No. : 09/818,134  
Filed : March 27, 2001

### **REMARKS**

The Applicant thanks the Examiner for his examination of the present application. By way of summary, Claims 1-34 were pending in this application. In the Final Office Action, the Examiner rejected Claims 1-34. In particular, the Examiner rejected Claims 1, 10-13, 15-20, and 25-32 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0026521 A1 to Sharfman et al. ("Sharfman"). The Examiner further rejected Claims 3-5, 7-8, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of U.S. No. 6,879,988 to Basin, et al. ("Basin"). The Examiner further rejected Claims 2, 14, and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "The Lharc/LHA Archiver" by Mille Babic ("Babic"). The Examiner further rejected Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view of U.S. Patent No. 6,668,244 to Rourke et al. ("Rourke"). The Examiner further rejected Claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view Babic. The Examiner further rejected Claims 33 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "Petite Win32 Executable Compressor" version 2.2 by Luck ("Luck").

In this response, Claims 1-34 remain as previously pending.

#### **A. PREVIOUS OBJECTION TO CLAIMS 3-9, 20, 22-24, 27, AND 30**

In an earlier Office Action, the Examiner objected to Claims 3-9, 20, 22-24, 27, and 30 because of the use of the term "may be." Applicant amended Claims 3, 20, 22, 24, 27, and 30 without altering their scope in order to clarify the features of Applicant's inventions. In the Final Office Action mailed April 4, 2006, the Examiner did not object to Claims 3-9, 20, 22-24, 27, and 30. Accordingly, Applicant thanks the Examiner for the withdrawal of the previous objection to Claims 3-9, 20, 22-24, 27, and 30.

#### **B. REJECTION OF CLAIMS 1, 10-13, 15-20, AND 25-32 UNDER 35 U.S.C. § 102**

The Examiner rejected Claims 1, 10-13, 15-20, and 25-32 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0026521 A1 to Sharfman et al. ("Sharfman"). In the previous response mailed January 6, 2006, the Applicant filed a Declaration of Prior Inventorship Under 37 C.F.R. §1.131 ("Rule 131 Declaration") to overcome Sharfman.

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The Examiner stated that the Rule 131 Declaration establishes conception. However, the Examiner also stated that the evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of Sharman to either a constructive reduction to practice or an actual reduction to practice.

**1. Diligence Is Not Required Since Reduction to Practice Occurred Before Sharfman**

Pursuant to 37 C.F.R. §1.131(b), Applicant can establish prior invention of the claimed subject matter by showing actual reduction to practice of the invention prior to the effective date of the reference. 37 C.F.R. §1.131(b); see also M.P.E.P. 715.07(III). Here, Applicant submits that the inventor “implemented and tested the invention recited in the pending claims of the Present Application thereby reducing the invention to practice prior to January 10, 2001,” the filing date of Sharfman. See Rule 131 Declaration ¶¶ 16, 20. Thus, Applicant is not required to establish diligence from a date prior to the date of reduction to practice of Sharman to either a constructive reduction to practice or an actual reduction to practice.

**2. Additional Evidence of Reduction to Practice**

To show reduction to practice prior to January 10, 2001, Applicant submitted a declaration by Stanislav Bobrovskiy as evidence that the inventor had fully implemented and tested a program that included the invention recited in the pending claims of the Present Application prior to January 10, 2001. See Rule 131 Declaration, Exhibit 4.

As additional evidence of reduction to practice prior to January 10, 2001, Applicant submits herewith a copy of an executable software program, Lipon Version 1.1. See Christensen Declaration, Exhibit A. The software program was created prior to January 10, 2001. See Christensen Declaration, ¶ 3.

As further evidence of reduction to practice prior to January 10, 2001, Applicant submits herewith a copy of three (3) pages discussing the software program, Lipon Version 1.1. See Christensen Declaration, Exhibit B. The three (3) pages illustrate one example use of the software program, Lipon version 1.1. The three (3) pages were created prior to January 10, 2001. See Christensen Declaration, ¶ 5.

Since Sharfman was filed on January 10, 2001, Applicant submits that Sharfman is removed from use as a reference for the pending claims. Accordingly, Applicant respectfully

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submits that the cited reference is not available as prior art, and Applicant respectfully requests reconsideration and withdrawal of the rejections to Claims 1, 10-13, 15-20, and 25-32 under 35 U.S.C. § 102(e).

**3. Traversal of the Rejection**

In addition, Applicant respectfully submits that even if Sharfman were a proper reference, which it is not, Sharfman does not disclose the claimed features of Claims 1, 10-13, 15-20, and 25-32.

**4. Summary**

Applicant therefore respectfully submits that Claims 1, 10-13, 15-20, and 25-32 are ready for allowance and request that the Examiner withdrawal of the rejection to Claims 1, 10-13, 15-20, and 25-32.

**C. REJECTION OF CLAIMS 2-9, 14, 21-24, AND 33-34 UNDER 35 U.S.C. § 103**

The Examiner rejected Claims 2-9, 14, 21-24, and 33-34 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in further view of other references. In particular, the Examiner rejected Claims 3-5, 7-8, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of U.S. No. 6,879,988 to Basin, et al. ("Basin"). The Examiner further rejected Claims 2, 14, and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "The Lharc/LHA Archiver" by Mille Babic ("Babic"). The Examiner further rejected Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view of U.S. Patent No. 6,668,244 to Rourke et al. ("Rourke"). The Examiner further rejected Claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view Babic. The Examiner further rejected Claims 33 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "Petite Win32 Executable Compressor" version 2.2 by Luck ("Luck").

**1. Rule 131 Declaration**

In view of the arguments as to the Rule 131 Declaration and the additional evidence discussed above, Applicant respectfully submits that Sharfman is removed from use as a reference for Claims 2-9, 14, 21-24, and 33-34. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections to Claims 2-9, 14, 21-24, and 33-34 under 35 U.S.C. § 103.

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**2. Traversal of the Rejection**

In addition, Applicant respectfully submits that even if Sharfman were a proper reference, which it is not, Sharfman does not, alone or in combination with the other cited references, disclose the claimed features of Claims 2-9, 14, 21-24, and 33-34.

**3. Summary**

Applicant therefore respectfully submits that Claims 2-9, 14, 21-24, and 33-34 are ready for allowance and request that the Examiner withdrawal of the rejection to Claims 2-9, 14, 21-24, and 33-34.

**D. REQUEST FOR TELEPHONE INTERVIEW**

Pursuant to M.P.E.P. § 713.01, in order to expedite prosecution of this application, Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner as soon as the Examiner has considered the effect of the arguments presented above. Applicant's attorney can be reached at (949) 721-7603 or at the number listed below.

**E. CONCLUSION**

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved. Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: Oct. 3, 2006

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